

STATE OF MINNESOTA

IN SUPREME COURT

A24-0271

Court of Appeals

Gaitas, J.
Dissenting, Thissen, J.

State of Minnesota,

Appellant,

vs.

Filed: August 19, 2026
Office of Appellate Courts

Nicholas Norton Engel,

Respondent.

Keith Ellison, Attorney General, Jacob Campion, Assistant Attorney General, Saint Paul, Minnesota; and

Nathan Haase, Pennington County Attorney, Thief River Falls, Minnesota, for respondent.

Claire Nicole Glenn, Climate Defense Project, Minneapolis, Minnesota, for appellant.

Teresa Nelson, David P. McKinney, Alicia Granse, American Civil Liberties Union of Minnesota, Minneapolis, Minnesota; and

Craig S. Coleman, Martin S. Chester, Joelle Groshek, Faegre Drinker Biddle & Reath LLP, Minneapolis, Minnesota, for amici curiae American Civil Liberties Union of Minnesota and American Civil Liberties Union Foundation.

Jill A. Brisbois, Grace Castleberg, Certified Student Practitioner, The JAB Firm, Minneapolis, Minnesota, for amicus curiae Minnesota Association of Criminal Defense Lawyers.

Joshua P. Preston, Minneapolis, Minnesota, for amicus curiae National Lawyers Guild – Minnesota Chapter.

S Y L L A B U S

1. When a suspect commits a new crime in response to law enforcement conduct that violates the Minnesota Constitution, a court should apply the four-factor attenuation test articulated in *State v. Warndahl*, 436 N.W.2d 770 (Minn. 1989), to determine whether the evidence of that crime is fruit of the poisonous tree that must be suppressed under the exclusionary rule.

2. Applying the four-factor attenuation test, the exclusionary rule does not require suppression of the evidence of appellant's vehicular flight in response to a traffic stop that violated the Minnesota Constitution.

Affirmed.

O P I N I O N

GAÏTAS, Justice.

In this case we must decide whether evidence of a defendant's vehicular flight, in response to a traffic stop that violated the Minnesota Constitution, must be suppressed under the exclusionary rule. Around midnight, on a rural highway in Thief River Falls, a police officer tried to stop appellant Nicholas Norton Engel because the officer did not see a rear license plate or temporary registration on Engel's van. Instead of stopping, Engel turned on his hazard lights and continued driving for several miles with the officer in pursuit. Additional officers responded, and Engel ultimately stopped at a location off the highway. Based on his failure to stop, Engel was charged with the felony offense of fleeing a peace officer in a motor vehicle. Engel moved to suppress the evidence of his flight, arguing that the traffic stop was unconstitutional and that his flight resulted from

that constitutional violation. The district court denied Engel's motion to suppress, and a jury found Engel guilty. The court of appeals affirmed.

We granted Engel's petition for further review on the question of whether evidence of flight in response to an unconstitutional seizure is subject to suppression under the exclusionary rule. Before our court, Engel rests his arguments exclusively under the Minnesota Constitution. To decide this issue, we first clarify the legal framework that a court should apply when considering whether to suppress evidence of a suspect's new criminal act committed in response to a law enforcement officer's constitutional violation. We hold that, under these circumstances, a court should apply our existing four-factor attenuation test, which assesses whether the evidence of the criminal act was "fruit of the poisonous tree" obtained by exploiting the initial constitutional violation. Applying the four-factor attenuation test here, we determine that the evidence of Engel's vehicular flight did not result from law enforcement's exploitation of the unconstitutional traffic stop. We therefore conclude that the exclusionary rule does not require suppression of the evidence, and we affirm.

FACTS

Shortly after midnight on September 30, 2021, appellant Nicholas Engel was driving his van on Highway 32 in Thief River Falls when a police officer in a marked squad car attempted to pull the van over to investigate a suspected license plate violation. Although the officer turned on his emergency lights and siren, Engel did not pull over. Instead, Engel turned on his hazard lights and continued driving for several miles with the police officer in pursuit. During this pursuit, the officer commanded Engel to pull

over three times through the van's open window, to no avail. When the van finally exited the highway and arrived at a camp of environmental protesters, Engel stopped driving. At this point, other law enforcement officers, who had been summoned to assist with the stop, arrested Engel. Based on this incident, respondent State of Minnesota charged Engel with one count of felony fleeing a peace officer in a motor vehicle, in violation of Minnesota Statutes section 609.487, subdivision 3.

Engel moved to suppress the evidence of his vehicular flight. He argued that the officer who initiated the traffic stop did not have a valid basis to stop him, violating his right to be free from unreasonable seizures under both the United States and Minnesota Constitutions.

The district court held an evidentiary hearing on Engel's motion. Following the evidentiary hearing, the district court made the following findings of fact.¹

On the night of September 30, a Thief River Falls police officer drove into the parking lot of a local gas station, where he saw a woman standing outside the gas station store. The woman was wearing yellow scrubs and hospital socks. The officer asked the woman if she was all right, and the woman responded, "Yes, I'm waiting." The officer then went inside the gas station, where he again saw the woman. This time she was with a man, whom the officer later identified as Engel. The officer observed the woman leave

¹ In reviewing a district court's decision on a motion to suppress, we defer to the district court's findings of fact unless they are clearly erroneous. *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011). Although Engel's brief makes a general challenge to the credibility of the officer's suppression hearing testimony, he does not challenge the district court's factual findings as clearly erroneous. Accordingly, we defer to the district court's findings of fact in its order addressing Engel's motion to suppress.

the store and enter a van with Engel. The officer remained “a little concerned” about the woman and wanted to run a check on the van’s license plate. He began following Engel’s van after it drove away from the gas station and observed that the van had no rear license plate.

As the van reached a roundabout that connected the street with the highway, the officer noticed “the outline of some sort of sign in the back window.” However, the officer could not read the sign due to the dark conditions and the distance between the squad car and the van. The officer testified at the hearing that this was when he decided to stop the van to verify its registration. When the van exited the roundabout and continued south on the highway, the officer initiated a traffic stop by turning on his emergency lights.

After the officer turned on his emergency lights, the van continued driving at a “slow rate of speed.” The van’s hazard lights turned on, but the van did not stop. According to the officer’s training, when a vehicle does not stop, an officer should notify dispatch and provide updates on the direction and speed of the vehicle. In such situations, officers must continue to pursue the vehicle until someone higher in command orders them to end the pursuit.

The officer continued to pursue Engel’s van, activating his siren. Twice during the pursuit, the officer drove into the oncoming lane of traffic, pulled up alongside the van, and ordered Engel to pull over. Both times, Engel responded through his open window. The officer could not understand Engel the first time. But the second time the officer pulled alongside the van, the officer heard Engel say that he would stop further down the

road. When Engel continued to drive, the officer accelerated past the van, pulled in front of it, and slowed down so that the van came to a stop. The officer then made a U-turn so that the officer's squad car was facing Engel's van. The officer exited his car and again ordered Engel to stop. Instead, Engel slowly drove past the officer, shouting from his window that he would stop down the road. The officer continued pursuing Engel's van with both his lights and siren on. At this point, according to the officer, Engel's van was driving at about 45 miles per hour. Several minutes later, the van pulled off the highway and headed toward the Red Lake Treaty Camp, which was a camp of environmental protesters. As Engel headed into the camp, other law enforcement vehicles arrived. Engel continued driving in a ditch alongside the camp. Law enforcement officers boxed the van in with their vehicles, and Engel stopped. Engel told the officers that he did not stop the van "because you guys keep harassing us" and because "it wasn't a safe location." Officers then arrested him.

The officer testified that, after he turned on his emergency lights to stop Engel, he followed the van for several miles. After the van finally stopped, the officer determined that the sign in the back window was a valid temporary vehicle registration from Wisconsin. The officer explained that he was not familiar with vehicle registration requirements in Wisconsin. The officer further testified that he was aware that the Red Lake Treaty Camp was an encampment of protesters located along the highway, but that he did not know that Engel and his passenger were affiliated with the camp until they stopped in the area.

Based on its factual findings, the district court determined that the officer had a “particularized, objective reason” for stopping Engel’s van—the officer’s belief that the van “did not have license plates and there was some type of sign which the officer could not clearly read in a back window of the vehicle.” The district court reasoned that a traffic stop was necessary under these circumstances for the officer “to obtain more information.” Accordingly, the district court concluded that the officer’s initiation of the traffic stop was not an unreasonable seizure in violation of Engel’s federal and state constitutional right to be free from such seizures.

After the district court denied Engel’s motion to suppress, Engel had a jury trial. The jury found Engel guilty of felony fleeing a peace officer in a motor vehicle. At sentencing, the district court stayed imposition of sentence and placed Engel on unsupervised probation for two years.

Engel appealed to the court of appeals, challenging, among other things, the district court’s denial of his motion to suppress the evidence of his flight. A divided panel of the court of appeals affirmed Engel’s conviction. *State v. Engel*, 18 N.W.3d 540, 559 (Minn. App. 2025). All members of the panel agreed that the traffic stop was unlawful. The majority determined that the traffic stop was an unlawful seizure under the Fourth Amendment of the United States Constitution because the officer did not have a reasonable, articulable suspicion that Engel had engaged in criminal activity when he initiated the stop. *Id.* at 549–50. But the majority concluded that suppression of the evidence of Engel’s flight was unwarranted because it was admissible under controlling precedent. *Id.* at 552. The dissenter, on the other hand, would have held that Engel’s

seizure was unlawful under the Minnesota Constitution and would not have reached this question under the United States Constitution. *Id.* at 559 (Frisch, C.J., dissenting).

Furthermore, the dissenter would have concluded that the exclusionary rule applied, requiring suppression of the evidence of Engel’s flight as fruit of the poisonous tree. *Id.*

Engel petitioned for review, seeking review of five issues. We granted Engel’s petition as to one issue, which he grounds in the Minnesota Constitution—whether evidence of a defendant’s vehicular flight in response to an unconstitutional traffic stop must be suppressed under the exclusionary rule.

ANALYSIS

The United States and Minnesota Constitutions prohibit “unreasonable searches and seizures.” U.S. Const. amend. IV; Minn. Const. art. I, § 10. When the State obtains evidence in violation of this prohibition, courts must address the “separate, analytically distinct issue” of the appropriate remedy. *State v. Lindquist*, 869 N.W.2d 863, 872 (Minn. 2015) (quoting *Davis v. United States*, 564 U.S. 229, 243 (2011)). The exclusionary rule—which requires suppression of illegally obtained evidence—is the “normal remedy” for such a violation. *State v. Malecha*, 3 N.W.3d 566, 571 (Minn. 2024).

In this case, the constitutional violation was an unreasonable seizure—a law enforcement officer’s initiation of a traffic stop without a valid reason. The evidence obtained as a result of the constitutional violation was evidence of a new crime—Engel’s vehicular flight from the law enforcement officer. We must decide whether Engel is entitled to the remedy of suppression for the officer’s constitutional violation.

Before us, Engel’s arguments focus exclusively on the Minnesota Constitution. Accordingly, we consider whether to apply the exclusionary rule under our state constitution.² The application of the exclusionary rule is a question of law, which we review de novo. *Malecha*, 3 N.W.3d at 570.

I.

We first identify the legal framework that a court should apply when deciding whether to suppress evidence of a suspect’s new criminal act committed in response to a law enforcement officer’s constitutional violation. To identify the appropriate legal framework for addressing this question, we initially consider the purpose and scope of the exclusionary rule under the Minnesota Constitution. Then, we examine the parties’ proposed approaches for deciding whether the exclusionary rule applies to evidence of a suspect’s new criminal act. Engel urges us to apply the four-factor attenuation test that we articulated in *State v. Warndahl*, 436 N.W.2d 770, 776 (Minn. 1989), to determine whether evidence of a suspect’s new criminal act should be suppressed as “fruit of the poisonous tree.” The State argues that we adopted a bright-line rule in *State v. Combs*,

² The parties do not contest that, when the law enforcement officer initiated the traffic stop by turning on his patrol car lights, Engel was seized under Article I, Section 10, of the Minnesota Constitution. *See In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993) (holding that, under the Minnesota Constitution, an individual is seized when a reasonable person in the individual’s shoes would conclude that they are not free to leave). Additionally, the State did not seek review of the court of appeals’ determinations that the officer did not have a reasonable, articulable suspicion of unlawful activity when he stopped Engel’s van and that the traffic stop was an unlawful seizure. Thus, we assume without deciding that the traffic stop was an unconstitutional seizure. And because the Minnesota Constitution’s protections are equal to or greater than those under the federal constitution, *see State v. Contreras-Sanchez*, 33 N.W.3d 700, 710 (Minn. 2026), we do so under Article I, Section 10 of the Minnesota Constitution.

398 N.W.2d 563, 565 n.2 (Minn. 1987), that evidence of a suspect’s new criminal act should not be suppressed, subject only to narrow exceptions. After evaluating the parties’ proposed approaches, we conclude that a court should apply the four-factor attenuation test when deciding whether to suppress evidence of a suspect’s new criminal act committed in response to a law enforcement officer’s state constitutional violation.

A.

We begin with the exclusionary rule under the Minnesota Constitution. The exclusionary rule is a “prudential doctrine ... created by [the United States Supreme] Court to compel respect for the constitutional guaranty” of freedom from unreasonable searches and seizures. *Lindquist*, 869 N.W.2d at 868 (citation omitted) (internal quotation marks omitted). “When the government obtains evidence in violation of the constitutional protection against unreasonable searches and seizures, the exclusionary rule generally prohibits using the evidence in a criminal proceeding against the individual whose rights were violated.” *State v. Steeprock*, 28 N.W.3d 417, 432 (Minn. 2025). Under the exclusionary rule, evidence obtained as a direct result of a constitutional violation must be suppressed as a remedy for the violation. *State v. Jackson*, 742 N.W.2d 163, 177–78 (Minn. 2007). Consistent with the United States Supreme Court, we have additionally held that evidence that “would not have come to light” but for law enforcement’s exploitation of the constitutional violation is “fruit of the poisonous tree,” which must also be suppressed. *See Warndahl*, 436 N.W.2d at 775 (quoting *Wong Sun v. United States*, 371 U.S. 471, 487–88 (1963)) (internal quotation marks omitted).

The United States Supreme Court first recognized the exclusionary rule as a remedy for Fourth Amendment violations in *Weeks v. United States*, 232 U.S. 383, 392 (1914), and then applied it to the states through the Fourteenth Amendment in *Mapp v. Ohio*, 367 U.S. 643, 655 (1961). But in Minnesota, we have also developed a body of case law governing the application of the exclusionary rule to violations of the Minnesota Constitution. *Malecha*, 3 N.W.3d at 573–74. We employ our independent judgment in interpreting the Minnesota Constitution, including when “determining whether a constitutional remedy, like exclusion, is available.” *Id.* (emphasis omitted).

Like its counterpart under federal law, the central purpose of our exclusionary rule is to deter law enforcement misconduct. *Id.* at 577–78. But we have acknowledged that the rule serves additional purposes under the Minnesota Constitution, including deterring unlawful government misconduct generally. *Id.* at 577 n.4, 578. We have observed that the exclusionary rule promotes the “public perception of fairness in the judicial process.” *Id.* at 578.

The exclusionary rule also “exacts a great cost on societal interests” by prohibiting the introduction of incriminating evidence against a defendant. *Lindquist*, 869 N.W.2d at 871 (quotation omitted). Nonetheless, if suppressing the evidence deters government misconduct and incentivizes lawful conduct, the benefits of excluding the evidence may outweigh the social costs. *See Malecha*, 3 N.W.3d at 578–79 (determining that the benefits of excluding evidence discovered during an arrest based on a clerical error outweighed the costs of exclusion).

“We have declined to apply the exclusionary rule to address violations of Article 1, Section 10 of the Minnesota Constitution when applying the rule would not serve its underlying remedial objectives.” *Steeprocks*, 28 N.W.3d at 432. Accordingly, we have recognized several specific exceptions to the exclusionary rule when suppressing the evidence would not serve the remedial objectives of the rule. *Id.* at 432–33. If an exception to the exclusionary rule applies, suppression of the evidence is not warranted. *Id.* at 432. The State bears the burden of showing that an exception to the exclusionary rule applies. *See id.* at 433 (noting that the State must establish that the inevitable discovery exception to the exclusionary rule applies).

B.

Again, our task is to identify a legal framework for deciding whether the exclusionary rule applies to evidence of a suspect’s new criminal act committed in response to a law enforcement officer’s state constitutional violation. Engel and the State offer competing proposals, which we briefly summarize.

Engel argues that our case law requires a court to consider whether evidence of a suspect’s new criminal act—such as Engel’s vehicular flight—is “fruit of the poisonous tree.” In other words, a court must determine whether evidence of the new criminal act “would not have come to light” but for law enforcement’s exploitation of the constitutional violation. *See Warndahl*, 436 N.W.2d at 775 (quoting *Wong Sun*, 371 U.S. at 487–88). Engel notes that, under the attenuation exception to the exclusionary rule, unless the evidence is sufficiently attenuated from the constitutional violation, it is fruit of the poisonous tree that must be suppressed. *See Knapp v. Comm’r of Pub. Safety*,

610 N.W.2d 625, 628 (Minn. 2000). To determine whether evidence is fruit of the poisonous tree, Engel observes that we have long applied a four-factor attenuation test. *See Warndahl*, 436 N.W.2d at 775–76 (articulating the four-factor attenuation test). Engel asks us to apply that test here, where the evidence at issue is evidence of a new crime.

The State argues that we have already adopted a *different* framework for deciding whether the exclusionary rule applies to evidence of a new crime. According to the State, we long ago held in *Combs* that evidence of a new crime committed in response to an unconstitutional arrest or search is not suppressed as a fruit of the illegality. 398 N.W.2d at 565 n.2. The State acknowledges that we subsequently refined the *Combs* rule to clarify that the exclusionary rule still applies where law enforcement intentionally exploited the constitutional violation or deliberately provoked a suspect into committing a new crime. *See City of St. Louis Park v. Berg*, 433 N.W.2d 87, 90 (Minn. 1988). But the State contends that under the “new crime exception” to the exclusionary rule, we need not apply the four-factor attenuation test when the evidence at issue is evidence of a new crime. Instead, under such circumstances, the evidence should not be excluded unless law enforcement intentionally exploited the constitutional violation or deliberately provoked the new crime.

We consider each of the parties’ proposals in turn, beginning with the attenuation framework that Engel proposes.

C.

Engel correctly observes that for violations of the Minnesota Constitution, we follow the fruit-of-the-poisonous-tree doctrine that the United States Supreme Court

adopted in *Wong Sun*, which requires suppression of evidence that “would not have come to light” but for law enforcement’s exploitation of the constitutional violation. *Wong Sun*, 371 U.S. at 487–88; *accord Knapp*, 610 N.W.2d at 628 (adopting and applying the *Wong Sun* rule). Determining whether evidence is fruit of the poisonous tree requires a court to consider “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that illegality or instead by means sufficiently distinguishable to be purged of the primary taint.” *Knapp*, 610 N.W.2d at 628 (quotation omitted).

We have devised a test for assessing whether evidence “came to light” as a result of law enforcement’s exploitation of a constitutional violation or is sufficiently attenuated from the violation to be admissible. The origin of our Minnesota test is *Brown v. Illinois*, 422 U.S. 590 (1975). There, the United States Supreme Court rejected a per se rule that a *Miranda* warning will always purge the taint of a defendant’s arrest in violation of the Fourth Amendment, thereby rendering a defendant’s statements made after the arrest admissible. 422 U.S. 590, 602–03 (1975). Instead, the Court adopted a case-by-case approach for courts to apply in determining whether evidence was sufficiently attenuated from the unconstitutional act to purge the taint of the illegality. *Id.* at 603–04. In making this determination, the Court instructed courts to consider factors such as the temporal proximity of the misconduct and the confession, the presence of intervening circumstances, and “particularly, the purpose and flagrancy of the official misconduct.” *Id.*

We first applied the *Brown* case-by-case approach in *State v. Weekes*, which also involved a defendant's statements following an unconstitutional arrest. 268 N.W.2d 705, 708–10 (Minn. 1978). That same year, in *State v. Bale*, we applied this same approach in analyzing whether physical evidence could be suppressed as the fruit of an unconstitutional arrest. 267 N.W.2d 730, 732–33 (Minn. 1978). In *State v. Sickels*, we also identified another factor as relevant to the inquiry: “whether it is likely that the evidence would have been obtained in the absence of the illegality.” 275 N.W.2d 809, 814 (Minn. 1979). Finally, in *Warndahl*, we articulated four factors to be considered in deciding whether the attenuation exception to the exclusionary rule applies: (1) “the purpose and flagrancy of the misconduct,” (2) “the presence of intervening circumstances,” (3) “whether it is likely that the evidence would have been obtained in the absence of the illegality,” and (4) “the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality.” 436 N.W.2d at 775–76 (considering the admissibility of the defendant's statements after the defendant invoked his right to counsel).³

³ In *State v. McDonald-Richards*, we applied the same fact-specific inquiry to determine whether a defendant's statements to law enforcement were tainted by an unlawful arrest. 840 N.W.2d 9, 16–19 (Minn. 2013). But there, citing to *Weekes*, we considered other, additional factors that were particular to a suspect's statements. The *McDonald-Richards* factors were:

- (1) Whether *Miranda* warnings were given;
- (2) The temporal proximity of the arrest and the confession;
- (3) The presence of any intervening circumstances;
- (4) The purpose and flagrancy of the official misconduct;
- (5) The treatment of defendant while confined;
- (6) His relationship with his

More recently, in *State v. Leonard*, we applied the four-factor attenuation test to determine whether the exclusionary rule required suppression of evidence found in a defendant's hotel room after an officer's unconstitutional search of the hotel guest registry. 943 N.W.2d 149, 161–62 (Minn. 2020). After considering the four factors, we concluded that the evidence was not sufficiently attenuated from the unconstitutional search, and thus, suppression of the evidence was required. *Id.* at 162.

We have never, however, applied the four-factor attenuation test to consider whether a suspect's commission of a new crime sufficiently attenuated the connection between a constitutional violation and the discovery of evidence for the evidence to be admissible. But the court of appeals has. In *State v. Olson*, the court of appeals considered whether the defendant's act of obstructing legal process removed the taint of his initial illegal arrest, precluding the suppression of methamphetamine discovered during a subsequent search incident to his arrest. 634 N.W.2d 224, 227 (Minn. App. 2001). The court of appeals applied the four-factor attenuation test to decide whether the methamphetamine was fruit of the poisonous tree. *Id.* at 229–30. Although the court of appeals determined that some of the factors favored suppression—including the purpose and flagrancy of the law enforcement officer's conduct—it ultimately concluded that the defendant's act of resisting arrest was an intervening act sufficient to purge the taint of

interrogators; and (7) His freedom of communication with persons other than law-enforcement officers.

Id. at 16 (quoting *Weekes*, 268 N.W.2d at 708–09).

the unlawful seizure. *Id.* Accordingly, the methamphetamine discovered during the search incident to arrest was not subject to the exclusionary rule. *Id.* at 230.

The court of appeals again applied the four-factor attenuation test in *State v. Bergerson*, in considering whether the defendant's flight from a law enforcement officer purged the taint of the officer's unconstitutional seizure. 659 N.W.2d 791, 797–99 (Minn. App. 2003). There, the officer violated the Minnesota Constitution by initiating a traffic stop without a lawful reason. *Id.* at 796–97. After the officer activated his squad car lights, the defendant drove for an additional mile, pulled over, exited the car, and ran. *Id.* at 794. When officers ultimately captured the defendant and searched his car, they found methamphetamine, a gun, and evidence suggesting that the defendant was manufacturing methamphetamine. *See id.* Following the defendant's arrest, he was charged with a drug crime and felony fleeing a peace officer. *Id.* The defendant argued that the exclusionary rule required suppression of the evidence, but the State responded that the defendant's flight purged the taint of the constitutional violation. *Id.* at 797–98. Applying the four-factor attenuation test, the court of appeals determined that suppression of the evidence was warranted. *Id.* at 798–99. As one factor, the court of appeals considered whether the defendant's flight was an intervening circumstance sufficient to purge the taint of the illegality. *Id.* at 798. Noting that it had previously distinguished between “offering physical resistance to arrest and merely fleeing an officer to dispose of evidence,” the court of appeals stated that the defendant's flight without resistance was an abandonment of evidence. *Id.* Because abandonment of evidence is a “predictable and common response” to an illegal search, the court of appeals held that such an act does not thwart

the application of the exclusionary rule. *Id.* (quoting *Olson*, 634 N.W.2d at 230).⁴ The court of appeals concluded that the defendant's flight was not an intervening circumstance that attenuated the constitutional violation from the discovery of the evidence. *Id.*⁵

Although the court of appeals has applied the four-factor attenuation test to consider whether a suspect's commission of a new crime (like obstructing legal process or fleeing a peace officer) sufficiently attenuated evidence of contraband discovered as a result of a constitutional violation, none of these cases involved the admissibility of evidence of the commission of the new crime itself. While Engel argues that the same four-factor attenuation test applies in such circumstances, as discussed next, the State argues that a separate line of cases addresses that scenario.

⁴ The court of appeals' statement in *Bergerson* that evidence abandoned in response to an unconstitutional seizure is fruit of the poisonous tree is consistent with our holdings in two earlier cases. In *E.D.J.*, officers violated the Minnesota Constitution when they ordered the juvenile to stop without reasonable, articulable suspicion. 502 N.W.2d at 783. After the officers' order, the juvenile continued to walk, dropped evidence, and then stopped. *Id.* at 780. Without analysis, we held that because the juvenile "abandoned the cocaine *after* he was unlawfully directed to stop, the abandonment was the suppressible fruit of the illegality." *Id.* at 783. In *State v. Hardy*, we likewise determined that evidence that the defendant abandoned when he ran in reaction to an unconstitutional search was fruit of the poisonous tree subject to exclusion. 577 N.W.2d 212, 217 (Minn. 1998). Although we did not consider the attenuation factors in *Hardy*, we cited our decision in *Warndahl* and noted that the primary purpose of the exclusionary rule is to deter police misconduct. *Id.* (citing *Warndahl*, 436 N.W.2d at 776).

⁵ The court of appeals did not consider in *Bergerson* whether the evidence of the defendant's flight was subject to the exclusionary rule. According to the court of appeals' decision, "the district court denied [the defendant's] motion to suppress the evidence seized." 659 N.W.2d at 794. Then, the State dismissed the fleeing charge. *Id.*

D.

According to the State, we have already resolved the question of whether evidence of a new crime should be suppressed. The State contends that it is settled law in Minnesota that a new crime committed in response to an unconstitutional search or seizure is not fruit of the illegality. We next explore the case law that the State identifies.

In *Bale*, we considered whether the exclusionary rule required suppression of a gun that the defendant pointed at an officer who had unlawfully arrested him. 267 N.W.2d at 732. The district court in *Bale* excluded the gun, determining that it was fruit of the unconstitutional arrest. *Id.* at 731–32. We reversed. *Id.* at 733. In determining whether the gun was the product of the unlawful arrest, we applied the attenuation test, citing our decision in *Weekes*. *Id.* at 732–33. We stated that “[n]umerous factors bear on the application of this test, including the temporal proximity of the illegality and the fruit of that illegality, the presence of intervening circumstances, and the purpose and flagrancy of the ... misconduct.” *Id.* at 733. As to the last factor—the purpose and flagrancy of the misconduct—we observed that this factor was “especially important, because the aim of the exclusionary rule is to deter police misconduct by removing the incentive to disregard constitutional guarantees.” *Id.* Applying these factors, we concluded that “the causal chain between the initial arrest and the physical evidence seized appears so attenuated that it would not serve the purpose of the exclusionary rule to exclude the evidence.” *Id.* In particular, we noted that the assault was “an intervening act of defendant’s free will.” *Id.* But we also observed that “[m]ore important is the fact

that no intent to secure evidence motivated the decision to custodially arrest defendant on the misdemeanor charge.” *Id.*

Following *Bale*, we decided a series of cases that addressed whether a defendant has a right to physically resist or assault an officer in response to an unconstitutional arrest. Some of these cases did not involve the exclusionary rule. For example, in *State v. Hoagland*, we considered whether the evidence was sufficient to support the defendants’ convictions for obstructing legal process after defendants threatened conservation officers who entered their farm to investigate an alleged conservation offense. 270 N.W.2d 778, 779–81 (Minn. 1978). At trial, the defendants asserted that they were entitled to resist what they contended was an unconstitutional search. *Id.* at 779. We stated, “Minnesota law does not recognize defendants’ asserted right to resist a search which they apparently felt was illegal.” *Id.* at 780. Likewise, in *In re Welfare of Burns*, we rejected a juvenile’s argument that his assault on two police officers was justified because the officers had unlawfully attempted to search his person and his car. 284 N.W.2d 359, 360 (Minn. 1979). And in *State v. Wick*, the defendant challenged the sufficiency of the evidence underlying his conviction for interfering with a police officer in the performance of official duties, arguing that he had a right to resist an officer who unlawfully arrested him. 331 N.W.2d 769, 771 (Minn. 1983). Again, we stated, “Minnesota law does not recognize defendant’s asserted right to resist an unlawful arrest or search.” *Id.* at 771.

On the other hand, several post-*Bale* cases involving a defendant’s physical resistance or assault on police did address the applicability of the exclusionary rule. In

State v. Kittleson, for example, we held that the exclusionary rule did not require suppression of the evidence of the defendant's assault on an officer following the officer's arguably unlawful entry into the defendant's room. 305 N.W.2d 787, 789 (Minn. 1981). We relied on our decision in *Bale*, but we also noted our decisions in *Burns* and *Hoagland* as standing for the proposition that it is not a defense to an assault charge that the assault was in response to a Fourth Amendment violation. *Id.*

In *State v. Combs*, we again addressed the applicability of the exclusionary rule to acts of resistance and assault. There, officers stopped a car to investigate a suspected violation of the open bottle law. 398 N.W.2d at 564. When one of the officers approached the passenger-side window, the passenger threw a cup on the floor, rolled up the window with the officer's arm in it, and ordered the driver to drive away. *Id.* With the officer's arm stuck in the window, the defendant began to drive. *Id.* The officer was forced to run alongside the car but was able to free himself by breaking the window. *Id.* When the officers subsequently attempted to arrest the driver and the passenger, they resisted arrest and assaulted the officers. *Id.*

The driver and the passenger were charged with open bottle violations, assault, fleeing an officer, obstructing legal process, and littering. *Id.* They moved to suppress the evidence underlying these offenses, arguing that the stop was unconstitutional. *Id.* The district court agreed, suppressing the evidence and dismissing all the charges. *Id.*

In the State's appeal, the court of appeals determined that the stop was unconstitutional. *State v. Combs*, 394 N.W.2d 567, 569 (Minn. App. 1986), *rev'd in part*, 398 N.W.2d 563 (Minn. 1987). The court of appeals affirmed the suppression of the open

bottle and littering charges. *Id.* at 569–70. But the court of appeals held that the district court had erred in dismissing the remaining charges against the driver and passenger. *Id.* at 569. The court of appeals stated, “[i]t is well settled that even when police conduct an illegal arrest or search, evidence of a crime committed in response is not suppressed as a fruit of the prior illegality.” *Id.*

On review, we determined that the stop complied with constitutional requirements. *Combs*, 398 N.W.2d at 565–66. Accordingly, we reversed the court of appeals’ decision insofar as it affirmed the dismissal of the open bottle and littering charges. *Id.* at 566. In a footnote, we stated: “Although we did not grant defendants’ petition, we note that the Court of Appeals correctly concluded that even if the stop was invalid, defendants still were not entitled to have the assault and related charges dismissed.” *Id.* at 565 n.2. In support of our statement in the footnote, we cited *Wick*, a sufficiency-of-the-evidence case, and *Kittleson*, an exclusionary-rule case. *Id.*

Finally, in *City of St. Louis Park v. Berg*, we considered whether the exclusionary rule required suppression of testimony about the defendant’s assault against two law enforcement officers when they tried to arrest him for a probation violation. 433 N.W.2d 87, 89–92 (Minn. 1988). We determined that the officers violated the Fourth Amendment by entering the defendant’s house and forcibly arresting him. *Id.* at 89. But we held that the evidence of the defendant’s assaultive conduct in response need not be suppressed under the exclusionary rule. *Id.* at 89–92. We noted that “[t]his court has rejected the contention that evidence of a defendant’s resistance to an illegal arrest must be suppressed as forbidden fruit of a Fourth Amendment violation by the police.” *Id.* at 89.

Then, citing *Bale*, we turned to whether the officers had exploited their unconstitutional acts to obtain evidence against the defendant. *Id.* at 90. We determined that the officers had not exploited their unlawful acts or deliberately provoked the defendant into committing the new crime. *Id.* at 90–92. Accordingly, we concluded that the exclusionary rule did not require suppression of the officers’ testimony about the defendant’s assaultive conduct. *Id.* at 92.

The State argues that these authorities, considered together, establish a rule that the fruit-of-the-poisonous tree doctrine—and its corresponding attenuation test—do not apply when a defendant commits a new crime in response to an unconstitutional search. Instead, under the State’s approach, evidence of a new crime should never be suppressed unless a law enforcement officer exploited the illegality to gain an advantage or deliberately provoked the defendant to commit a new crime.

E.

Having examined the two approaches proposed by Engel and the State for determining whether the exclusionary rule applies to evidence of a suspect’s new criminal act committed in response to a law enforcement officer’s constitutional violation, we now decide the appropriate legal framework for addressing this question.

Preliminarily, we disagree with the State’s argument that our decisions in *Combs* and *Berg* rejected the fruit-of-the-poisonous-tree doctrine for evidence of a new crime committed in response to a law enforcement officer’s constitutional violation and adopted an alternative approach for such cases. In *Combs*, the question of the exclusionary rule’s application was not before us because we determined that there was no constitutional

violation. *See Combs*, 398 N.W.2d at 565–66. Our remark in a footnote that “the Court of Appeals correctly concluded that even if the stop was invalid, defendants still were not entitled to have the assault and related charges dismissed,” *id.* at 565 n.2, was therefore a statement of obiter dictum rather than a binding rule of law. *See State ex rel. Foster v. Naftalin*, 74 N.W.2d 249, 266 (Minn. 1956) (stating that obiter dicta are “expressions in a court’s opinion which go beyond the facts before the court and therefore are the individual views of the author of the opinion and not binding in subsequent cases”); *see also Sheehy v. Kalis*, 19 N.W.3d 186, 193 n.9 (Minn. 2025). In *Berg*, we cited this principle from *Combs*. 433 N.W.2d at 90. But in determining whether the defendants’ assaultive conduct in *Berg* was subject to the exclusionary rule, we instead relied on our decision in *Bale*, which used the attenuation test to address whether the exclusionary rule applied. *Id.* at 90–91; *see Bale*, 267 N.W.2d at 732–33 (stating and applying the four-factor attenuation test). And although we stated in *Berg* that the “very inextricability of the issues ... makes use of the poisonous fruit doctrine inapposite” when a defendant resists arrest, we went on to perform a fact-specific analysis in deciding whether to suppress the evidence of the defendant’s resistance. *Berg*, 433 N.W.2d at 90–91. That analysis considered whether the officers exploited their constitutional violations or provoked the defendant’s resistance. *Id.* at 90. Those considerations—exploitation and provocation—are at the heart of the fruit-of-the-poisonous tree doctrine. *See Knapp*, 610 N.W.2d at 628 (stating that, in determining whether evidence is fruit of the poisonous tree, a court should consider “whether, granting establishment of the primary illegality, the evidence to which instant objection is made has been come at by exploitation of that

illegality or instead by means sufficiently distinguishable to be purged of the primary taint”). And they reflect at least one factor of the attenuation test: the purpose and flagrancy of law enforcement’s misconduct. *See Warndahl*, 436 N.W.2d at 775–76. For these reasons, we are not persuaded that *Combs* and *Berg* categorically rejected the fruit-of-the-poisonous-tree doctrine for evidence of new crimes committed in response to a law enforcement officer’s constitutional violation in favor of an alternative rule.

We acknowledge that our case law has not always been clear about the legal framework that should apply under these circumstances, particularly where a suspect has resisted arrest or assaulted a law enforcement officer. But on the few occasions when we have considered whether a suspect’s new criminal act barred application of the exclusionary rule, we have employed a fact-specific analysis. *Bale*, 267 N.W.2d at 733; *Berg*, 433 N.W.2d at 91. And on those occasions, we have either followed the attenuation test for determining whether the evidence is fruit of the poisonous tree, *Bale*, 267 N.W.2d at 733, or considered some of the attenuation factors, *Berg*, 433 N.W.2d at 91. The court of appeals, likewise, has used the attenuation test in deciding whether a suspect’s new crime committed after a constitutional violation barred application of the exclusionary rule. *Olson*, 634 N.W.2d at 227; *Bergerson*, 659 N.W.2d at 797–99.

We now clarify that the fruit-of-the-poisonous-tree doctrine applies even when a suspect commits a new crime in response to a law enforcement officer’s constitutional violation. In considering whether the exclusionary rule requires suppression of the evidence of the new crime, courts must determine whether the evidence is fruit of the poisonous tree by applying the four-factor attenuation test.

We conclude that this legal framework should apply for several reasons. First, the four-factor attenuation test is well suited to address the question of whether a suspect's new crime is the fruit of a law enforcement officer's constitutional violation. The attenuation exception to the exclusionary rule is rooted in the premise that other events—including a suspect's actions following a constitutional violation—may attenuate the connection between the evidence and the initial illegality. *See Wong Sun*, 371 U.S. at 486 (considering whether the defendant's statements resulted from “an intervening act of a free will” or from the constitutional violation). And the four-factor attenuation test assesses, on a case-by-case basis, whether that attenuation has occurred. *See Warndahl*, 436 N.W.2d at 776 (articulating factors to be considered in determining whether evidence is fruit of the poisonous tree and therefore subject to the exclusionary rule).

Second, the attenuation test serves the primary purpose of the exclusionary rule, which is deterrence of government misconduct. *See Malecha*, 3 N.W.3d at 577–78. At its core, the test balances the interest in deterring government misconduct against the societal cost of suppressing the evidence. *See Weekes*, 268 N.W.2d at 710.

Third, using the attenuation test to determine whether evidence of a new crime is fruit of the poisonous tree is most consistent with Minnesota case law. As noted, in *Bale*, we applied that test to decide whether evidence of a gun that a suspect used to assault a law enforcement officer following a constitutional violation was subject to the exclusionary rule. *Bale*, 267 N.W.2d at 732–33.

Finally, Minnesota courts have experience with the fruit-of-the-poisonous-tree doctrine and the corresponding four-factor attenuation test. We adopted the attenuation

test in 1978. *See Weekes*, 268 N.W.2d at 708–09. Since then, both this court and lower courts have applied it countless times to determine whether evidence is fruit of the poisonous tree that must be suppressed.

Thus, we hold that when a suspect commits a new crime in response to law enforcement conduct that violates the state constitution, a court should apply the four-factor attenuation test to determine whether the evidence of that crime is fruit of the poisonous tree that must be suppressed under the exclusionary rule.

II.

We now apply the four-factor attenuation test to decide whether the evidence of Engel’s vehicular flight was fruit of the law enforcement officer’s unconstitutional traffic stop that must be suppressed under our state exclusionary rule. Under the four-factor attenuation test, we consider: (1) “the purpose and flagrancy of the misconduct,” (2) “the presence of intervening circumstances,” (3) “whether it is likely that the evidence would have been obtained in the absence of the illegality,” and (4) “the temporal proximity of the illegality and the evidence alleged to be the fruit of the illegality.” *Warndahl*, 436 N.W.2d at 776. No factor alone is dispositive. *Weekes*, 268 N.W.2d at 709. Instead, we must balance the attenuation factors to determine whether the evidence was obtained by exploitation of a constitutional violation. *Id.*

We address each of these factors in turn to determine whether the State satisfied its burden to show that Engel’s vehicular flight was sufficiently attenuated from the officer’s unconstitutional traffic stop to purge the taint of that unlawful act. Because on balance the

factors weigh against applying the attenuation exception here, we conclude that the evidence of Engel’s vehicular flight should not be suppressed.⁶

A.

The first factor is the purpose and flagrancy of the law enforcement officer’s misconduct. This factor is especially important because it addresses the purpose of the exclusionary rule—deterring government misconduct. *Bale*, 267 N.W.2d at 733 (stating that the purpose-and-flagrancy factor is “especially important, because the aim of the exclusionary rule is to deter police misconduct by removing the incentive to disregard constitutional guarantees”); *see Utah v. Strieff*, 579 U.S. 232, 239, 241 (2016) (stating that the purpose-and-flagrancy factor is “ ‘particularly’ significant” because it is tied to the deterrent purpose of the exclusionary rule (quoting *Brown*, 422 U.S. at 604)).

The purpose-and-flagrancy factor requires a court to make two inquiries. First, a court must consider the purpose of the official misconduct. When a law enforcement officer “deliberately provoke[s]” a suspect to commit a new crime or “exploit[s] the illegality of its agents to gain some advantage,” the purpose of the misconduct favors suppressing the resulting evidence. *See Berg*, 433 N.W.2d at 90. Second, a court should examine the flagrancy of the misconduct. When police misconduct is “particularly flagrant and offensive,” we broaden the scope of exclusion to deter the same misconduct in the future. *Warndahl*, 436 N.W.2d at 776.

⁶ Because Engel grounded his arguments to us exclusively under the Minnesota Constitution, and because we have adopted the four-factor attenuation test for which he advocated, we have no need to consider the exclusionary rule’s application here under the Fourth Amendment.

Here, the purpose-and-flagrancy factor does not support application of the exclusionary rule. First, we cannot conclude that the law enforcement officer initiated the traffic stop to provoke Engel's flight or that he continued the pursuit of Engel to exploit the constitutional violation. The district court found that the officer initiated the stop of Engel's van because he believed that the van was not properly registered. Although Engel argued to the district court that the officer's stop was a pretext to investigate protesters, the district court implicitly rejected this argument. The court of appeals determined that the officer's belief was not a constitutionally valid basis for the stop. But the court of appeals observed that the record contains no evidence that the officer provoked Engel into committing the fleeing offense or exploited the improper stop. We agree.

Second, because the officer's initiation of the stop was not particularly flagrant or offensive misconduct, there is no need to apply a broadened scope of exclusion. *See Warndahl*, 436 N.W.2d at 776. The officer explained that he initiated the traffic stop to investigate whether the van was properly registered. Although the officer later discovered that the van was properly registered in the State of Wisconsin, he explained that he was not familiar with registration requirements in Wisconsin. Likewise, the officer's conduct during the pursuit was not flagrant or offensive misconduct. The district court found that the officer followed his training by continuing to pursue Engel while updating dispatch on the situation.

Before this court, Engel attacks the officer's credibility, arguing that the officer's testimony at the suppression hearing reveals that the motive for the traffic stop was improper and that the decision to stop Engel was flagrant misconduct. But Engel does not

challenge the district court's factual findings as clearly erroneous. And it is not the role of this court to second-guess a district court's credibility findings. *See State v. Smith*, 814 N.W.2d 346, 350 (Minn. 2011) (stating that we must accept a district court's factual findings unless they are clearly erroneous).

Based on the facts here, we conclude that the officer's purpose in initiating the stop and in continuing to pursue Engel was not to exploit a constitutional violation. We further conclude that the officer's conduct was not particularly flagrant or offensive misconduct. The purpose-and-flagrancy factor therefore weighs against suppressing the evidence of Engel's vehicular flight.

B.

The second attenuation factor is whether there were intervening circumstances that purged the taint of the law enforcement officer's unconstitutional traffic stop. This factor examines any events that occurred between the police misconduct and the discovery of the challenged evidence. *McDonald-Richards*, 840 N.W.2d at 17–18. When an intervening event breaks the causal chain between the misconduct and the discovery of the evidence, this factor weighs against suppression. *Id.*

Our case law illustrates the application of this factor. In *McDonald-Richards*, we determined that there were no intervening events that broke the causal chain between the defendant's unconstitutional arrest and her statement to law enforcement. The defendant was unlawfully arrested, continuously held in custody, and then questioned. *Id.* at 18.

In *State v. Leonard*—where we acknowledged that it was a “close call” as to whether the evidence found in the defendant's hotel room was fruit of the poisonous

tree—we examined several events that occurred between the law enforcement officers’ unconstitutional request for information from the hotel guest registry and the discovery of the evidence. 943 N.W.2d at 161–62. Following the officers’ request, the hotel clerk provided the requested information, the officers performed a background check on the defendant, reported to the defendant’s room for a “knock and talk,” obtained the defendant’s limited consent to search the room, “subdued Leonard through a physical struggle after he tried to flee,” and then obtained a search warrant for the room. *Id.* at 153–54. The State argued that the discovery of the evidence was attenuated by the hotel clerk’s disclosure, the officers’ background check on the defendant, and the “knock and talk” at the door of the defendant’s hotel room. *Id.* at 161–62. We rejected this argument, however, concluding that these events “were simply logical results—not interruptions—of the illegal search of the guest registry.” *Id.* at 162.

Bale, on the other hand, involved such an interruption. There, we recognized that a suspect may break the chain of events by engaging in “an intervening act of ... free will” in response to an unlawful search or seizure. *Bale*, 267 N.W.2d at 733. In *Bale*, we considered whether the defendant’s act of brandishing a gun toward the arresting officer was an intervening circumstance that purged the taint of the allegedly unconstitutional arrest. We held that the defendant’s act of assault against the officer was an intervening act of free will that would have “dissipated any taint of an illegal custodial arrest if there was one.” *Id.*

Engel argues that his vehicular flight was not an intervening circumstance that purged the taint of the officer’s unconstitutional stop. He contends that no Minnesota

court “has found flight alone to be an intervening circumstance following an unlawful search or seizure violative of the Minnesota Constitution.” Engel refers to several cases where Minnesota courts have applied the exclusionary rule following a defendant’s nonviolent flight from law enforcement officers. *See Hardy*, 577 N.W.2d at 217; *Leonard*, 943 N.W.2d at 162; *Bergerson*, 659 N.W.2d at 798. And he suggests that “nonviolent flight” can never be an intervening circumstance.

But the cases Engel cites involve suspects who fled to abandon physical evidence. While we have not explicitly addressed the abandonment doctrine that the court of appeals relied on in *Bergerson*, the circumstances here did not involve the abandonment of physical evidence in response to an unconstitutional act.

Moreover, in arguing that “nonviolent flight” should *never* be an intervening circumstance, Engel seemingly advocates for a categorical rule. We will not establish a categorical rule in this context. To decide whether evidence is fruit of the poisonous tree, a court must consider each case on its facts and must balance the attenuation factors. *Weekes*, 268 N.W.2d at 709. We have also emphasized that no single factor is dispositive. *Id.* Thus, whether a suspect’s flight constituted an intervening circumstance sufficient to purge the taint of a law enforcement officer’s constitutional violation must be determined on a case-by-case basis.

Relying on a court of appeals decision, Engel also contends that “predictable and common responses” to official misconduct are not intervening circumstances sufficient to purge the taint of a constitutional violation. *See State v. Baldur*, 514 N.W.2d 607, 611–12 (Minn. App. 1994) (observing that because the defendant’s attempt to destroy

incriminating evidence was a predictable and common response to an unlawful search, evidence of the attempt should have been suppressed); *see also Engel*, 18 N.W.3d at 562 (Frisch, C.J., dissenting) (determining that Engel’s nonviolent vehicular flight was a predictable and common response to the officer’s unlawful traffic stop).

In our view, the analysis should focus on the purpose of the fruit-of-the-poisonous-tree doctrine—preventing *exploitation* of constitutional violations to discover evidence. Thus, the inquiry should be whether a person’s new crime was a foreseeable response to law enforcement’s exploitation of a constitutional violation. *See* 6 Wayne R. LaFare, *Search and Seizure: A Treatise on the Fourth Amendment* § 11.4(j) at 503 (6th ed. 2020) (observing that, in some cases, the nature of a constitutional violation will be such that defensive action by the victim can fairly be characterized as a response to exploitation). In such cases—where a new crime was a foreseeable response to law enforcement’s exploitation of a constitutional violation—a new crime may not be sufficient to purge the taint of the constitutional violation.⁷

⁷ We agree with the dissent that the foreseeability of a person’s response to law enforcement misconduct is an important factor. But we disagree that this should be the only relevant inquiry. The dissent’s approach would effectively flatten our multi-factor analysis into a single question of foreseeability—whether a reasonable person would conclude that the illegal seizure would provoke a person to engage in the criminal conduct, based on whether the person’s response to the illegal seizure is uncommon, predictable, unsurprising, and foreseeable. This approach, however, could include dangerous or violent conduct. It also fails to draw a line when a person’s response to an unlawful search or seizure evolves into an intervening act of the person’s free will. *See Bale* 267 N.W.2d at 733. In contrast, the attenuation inquiry is supported by our case law, provides useful guidance to lower courts, and more meaningfully defines the point at which the suppression of evidence of criminal conduct, however foreseeable it may be, no longer serves the goals of the exclusionary rule.

Applying these principles here, we determine that Engel’s vehicular flight was not a foreseeable response to law enforcement’s exploitation of a constitutional violation.

First, we have already determined that the officer did not exploit the unconstitutional stop by pursuing Engel to obtain evidence or provoking Engel into committing a new crime.

Second, even assuming that there was exploitation, Engel’s response to the officer’s initiation of the traffic stop was not foreseeable. His vehicular flight—which spanned for miles and involved multiple evasive maneuvers—was not a logical result of the unlawful traffic stop. *See Leonard*, 943 N.W.2d at 161–62. Instead, it was an interruption of the unlawful traffic stop. *See id.*

Engel’s vehicular flight was an intervening act that attenuated the law enforcement officer’s constitutional violation from the evidence of Engel’s flight. His flight from the law enforcement officer evolved into an independent act of his free will that purged the taint of the officer’s constitutional violation. Following the officer’s initiation of the traffic stop, Engel engaged in multiple volitional acts: he refused to pull over for some time after the officer used lights and siren to signal a stop; he disobeyed the officer’s direct verbal and physical commands to stop; he continued driving when the officer attempted to block his van with the squad car; miles into the pursuit, he left the highway and drove in a ditch; and he only stopped driving when boxed in by multiple law enforcement vehicles. Although Engel’s vehicular flight was nonviolent and relatively slow, through his multiple volitional acts, it became a new—and potentially dangerous—offense. *See Minn. Stat. § 609.487, subd. 1* (defining “flee” as refusing to stop “following a signal given by any peace officer to the driver of a motor vehicle”).

Accordingly, Engel’s vehicular flight was an intervening circumstance that dissipated the taint of the officer’s constitutional violation. This factor weighs against suppression of the evidence.

C.

The third factor of the attenuation test is “whether it is likely that the evidence would have been obtained in the absence of the illegality.” *Warndahl*, 436 N.W.2d at 776. This factor, much like the intervening circumstances factor, examines the causal chain of events to address whether the evidence was discovered “by means sufficiently distinguishable” from the unlawful conduct to purge the primary taint. *Id.* at 775 (citation omitted) (internal quotation marks omitted). When it is likely that the evidence would have been obtained in the absence of the constitutional violation, this factor weighs against suppression of the evidence.

In *Warndahl*, we determined that a defendant’s statement, which he gave after requesting to speak with a law enforcement officer, was not the “fruit” of a prior illegal statement. 436 N.W.2d at 776. We noted that the defendant’s initiation of contact with police was not only an intervening circumstance, but it also suggested that the defendant would have given the statement to police even absent the constitutional violation. *Id.* In contrast, in *Leonard* we focused on the unbroken, but-for causal chain that stretched from the illegal search to the discovery of the evidence. 943 N.W.2d at 161–62 (“Stated otherwise, if the officers had not searched the guest registry, they could not have run a background check, would not have known where to find Leonard for a ‘knock and talk,’ and could not have applied for a search warrant.”).

Here, as in *Leonard*, it is clear that the evidence of Engel's vehicular flight would not have been obtained without the unlawful traffic stop. If the officer had not initiated the unconstitutional stop, Engel would not have fled. This factor favors suppression of the evidence.

D.

The final factor is the temporal proximity between the constitutional violation and the evidence. *Warndahl*, 436 N.W.2d at 775. When "substantial time" has passed between the illegality and the discovery of the evidence, this factor disfavors exclusion. *See Kaupp v. Texas*, 538 U.S. 626, 633 (2003). The temporal proximity factor is often considered the "least determinative factor involved" in the attenuation analysis. *See LaFave, supra*, § 11.4(b) at 387 (citation omitted) (internal quotation marks omitted).

Here, Engel's vehicular flight occurred immediately after the law enforcement officer initiated the traffic stop. The passage of time did not attenuate the constitutional violation from the evidence of Engel's new crime. Thus, this factor favors suppression.

E.

After considering and balancing the four factors, we determine that the evidence of Engel's vehicular flight was not fruit of the poisonous tree because it was sufficiently attenuated from the unconstitutional stop. In other words, the law enforcement officer did not obtain the evidence of Engel's flight by exploiting the initial constitutional violation. *See Knapp*, 610 N.W.2d at 628. The officer's unlawful stop was not calculated to produce Engel's vehicular flight. The officer's conduct, while improper, was not so flagrant as to

weigh strongly in favor of suppression. And Engel's vehicular flight was an act that purged the taint of the unlawful stop.

Because the evidence of Engel's vehicular flight was not fruit of the poisonous tree under the attenuation exception to the exclusionary rule, suppressing the evidence would not serve the primary purpose of the exclusionary rule—deterring police misconduct. *See Malecha*, 3 N.W.3d at 577. We therefore conclude that the exclusionary rule does not apply and that Engel is not entitled to suppression of the evidence.

CONCLUSION

For the foregoing reasons, we affirm the decision of the court of appeals.

Affirmed.

D I S S E N T

THISSEN, Justice (dissenting).

A jury convicted appellant Nicholas Norton Engel of fleeing a police officer, in violation of Minn. Stat. § 609.487, subd. 3, because he refused to stop his vehicle immediately when a police officer initiated a traffic stop by turning on his emergency lights. The stop was later found to be an unconstitutional seizure.¹ Engel argues that the

¹ As the court observes, because the court of appeals determined that the law enforcement officer's stop of Engel violated the Fourth Amendment to the United States Constitution, and the State did not ask us to review that conclusion, we assume the officer's attempt to stop Engel was unconstitutional. The court of appeals reasoned that the officer followed Engel from a gas station without any suspicion that Engel or his passenger had engaged in any criminal activity. After following Engel's vehicle for several miles, the officer noticed Engel's vehicle lacked a rear license plate. The officer observed a sign in the rear window but did not know whether the sign was a temporary license tag. The sign was, in fact, a temporary license tag, meaning that the officer's justification for the stop—that the vehicle was not properly registered—lacked a factual basis. *State v. Engel*, 18 N.W.3d 540, 546, 548 (Minn. App. 2025). Based on these facts, the court of appeals reasoned as follows:

[T]he police officer testified at the omnibus hearing that he sought to confirm whether the sign in Engel's window was a temporary registration tag. But the desire to confirm the nature or validity of the sign does not, standing alone, amount to a reasonable, articulable suspicion necessary to justify a seizure. Because the officer initiated a traffic stop solely on his inability to discern whether the sign displayed in the rear window was a temporary registration tag, he lacked the required reasonable, articulable suspicion of criminal activity to conduct a constitutionally permissible seizure.

Id. at 549–50. In other words, “[t]he police officer’s seizure here was based on a ‘whim’ and ‘idle curiosity’ as to whether the temporary tags were valid.” *Id.* at 549 (quoting *State v. Anderson*, 683 N.W.2d 818, 823 (Minn. 2004)).

It is also worth noting that it is unclear that Engel was seized for Fourth Amendment purposes until the police actually stopped his van. *See California v. Hodari D.*, 499 U.S. 621, 627 (1991) (concluding that a person is seized for purposes of the Fourth Amendment when they “*submit[]* to [an] assertion of authority” by law enforcement). Under Article I, Section 10, of the Minnesota Constitution, however, a

evidence that he refused to immediately stop his vehicle—the police officer’s testimony that Engel’s conduct after the officer activated his emergency lights and Engel’s own explanation that he continued to drive because he wanted to get to a safe place before stopping—must be suppressed because that evidentiary fruit (the evidence of his failure to stop when the officer initiated the stop) comes from the poisonous tree of the unconstitutional stop.

I disagree with the court’s conclusion that the attenuation limitation on the exclusionary rule applies here for the simple reason that no attenuation exists by virtue of the nature of the crime. There is a direct causal connection—and no temporal gap exists—between the evidence that Engel seeks to suppress (evidence of fleeing an officer) and the unconstitutional seizure. I conclude that in cases like this—where the evidence to be excluded is evidence of conduct made criminal because the conduct was undertaken in direct response to an unconstitutional seizure—the proper question to ask in determining whether the evidence is subject to the exclusionary rule is whether a reasonable person would conclude that, under the circumstances, the unconstitutional seizure would have provoked a person to engage in the criminal conduct at issue. *See City of St. Louis Park v. Berg*, 433 N.W.2d 87, 90 (Minn. 1988) (considering whether “officers were deliberately provoking defendant into committing a new crime” in determining whether to apply the exclusionary rule). In answering that question, the court should

person is seized when police order the person to stop. *In re Welfare of E.D.J.*, 502 N.W.2d 779, 783 (Minn. 1993) (rejecting *Hodari* under “our independent authority to interpret our own state constitution”). Thus, this case comes before us on a violation of the Minnesota Constitution.

focus on whether a suspect's response to an illegal seizure is common, predictable, unsurprising, and foreseeable. Because neither the district court nor the court of appeals applied this test, I would reverse and remand the case to the district court. Accordingly, I dissent.

A.

The United States and Minnesota Constitutions protect individuals against unreasonable searches and seizures. U.S. Const. amend. IV; Minn. Const. art. I, § 10. The exclusionary rule generally prohibits evidence obtained in violation of an individual's constitutional rights from being used in criminal proceedings against the victim of an illegal search or seizure. *State v. Douglas*, 29 N.W.3d 187, 191 (Minn. 2025).

The exclusionary rule is a forward-looking remedial rule aimed at preventing future violations of the Fourth Amendment by removing the incentive to disregard it. *Brown v. Illinois*, 422 U.S. 590, 599–600 (1975). It is not a rule designed to punish a specific law enforcement officer for violating the Constitution or to vindicate an individual suspect's constitutional right to be free from unreasonable seizures or searches. *See id.* In other words, it is a structural remedy to be enforced against the State and to preserve “one of the most fundamental protections our constitution guarantees to Minnesotans”—freedom from unreasonable and warrantless government intrusion. *Douglas*, 29 N.W.3d at 198.

We decide the contours of the exclusionary rule in Minnesota. In that determination, we are not bound by United States Supreme Court pronouncements, and we have applied the exclusionary rule more broadly (i.e., with narrower exceptions to its

applicability) than the Supreme Court. *See id.* at 192 & n.3 (applying the good-faith exception to the exclusionary rule more narrowly than the United States Supreme Court); *State v. Malecha*, 3 N.W.3d 566, 579 (Minn. 2024) (declining to follow the United States Supreme Court’s holding in *Arizona v. Evans*, 514 U.S. 1, 15 (1995), that evidence obtained in reasonable reliance on an unconstitutional arrest warrant that appears active to law enforcement because of a clerical error is admissible).

In defining the contours of the exclusionary rule, we are attempting to mark the line where the exclusionary rule’s several important purposes—detering police from engaging in unconstitutional searches and seizures, discouraging other unlawful government conduct, preserving judicial integrity, and providing a remedy for violations of the Minnesota Constitution, *Douglas*, 29 N.W.3d at 198—become less weighty than countervailing societal interests, particularly the interest in allowing jurors to consider evidence relevant to a defendant’s guilt.

The logic of the rule is straightforward. If law enforcement officers believe that some or all of the incriminating evidence unconstitutional seizures or searches yield will be admitted at trial anyway, the incentive for officers to refrain from conducting unconstitutional seizures and searches is materially diminished. Accordingly, courts generally suppress “the fruit of the poisonous tree”—evidence obtained directly or derivatively from an illegal seizure or search—in order to incentivize law enforcement to stay within the constitutional perimeter.

One of the borders we have drawn around the exclusionary rule—the doctrine upon which the court rests its decision here—is an attenuation limitation.² The attenuation limitation reflects a concern that the exclusionary rule cannot be a strict “but for” rule because “sophisticated argument may prove a causal connection” between an unconstitutional seizure or search and the discovery of evidence, but that connection may extend beyond sensible limitations. *Nardone v. United States*, 308 U.S. 338, 341 (1939); see *Wong Sun v. United States*, 371 U.S. 471, 488 (1963) (stating that the exclusionary rule does not always require suppressing evidence “simply because it would not have come to light but for the illegal actions of the police”). Put differently, a court may still admit evidence when its discovery by law enforcement is insufficiently connected to the illegal search or seizure. The attenuation limitation is designed to confine the exclusionary rule’s but-for causal reach by requiring suppression of evidence law enforcement obtains using information gained from an illegal seizure or search (evidence “that has been come at by exploitation of [the] illegality”) but allowing admission of evidence that comes by “means sufficiently distinguishable” from an illegal seizure or

² We have also limited the reach of the exclusionary rule in other ways for other reasons, including the “good-faith exception,” *Douglas*, 29 N.W.3d at 200 (stating that the exclusionary rule does not apply to evidence obtained in an illegal seizure or search “when law enforcement acts in objectively reasonable reliance on subsequently reversed binding appellate precedent which articulates a rule that specifically authorized the officer’s conduct under the circumstances addressed in the precedential case and the rule has not been unsettled by subsequent decisions”), and the “inevitable discovery rule,” *State v. Diede*, 795 N.W.2d 836, 849 (Minn. 2011) (stating that suppression of evidence found in an illegal search is not required where the State establishes that the evidence “ultimately or inevitably” would have been discovered by lawful means, but precluding the argument that law enforcement could have conducted a constitutional seizure or search but failed to do so (citation omitted) (internal quotation marks omitted)).

search. *Wong Sun*, 371 U.S. at 488. To determine whether the attenuation limitation allows for admitting specific evidence, we look to see if there is a disrupting event or “interruption” that sufficiently breaks the chain of causation between an illegal seizure or search and the discovery of incriminating evidence the State proposes to use at trial. *State v. Leonard*, 943 N.W.2d 149, 162 (Minn. 2020) (holding that a subsequent background check, “knock and talk,” and warrant were “simply logical results—not interruptions—of [an initial] illegal search of [a hotel] guest registry”); *State v. McDonald-Richards*, 840 N.W.2d 9, 17 (Minn. 2013) (deciding that evidence of officer conduct before the defendant’s seizure was not an intervening event).³

³ We have applied an attenuation analysis (with few exceptions) in cases where the evidence that the defendant sought to exclude is an inculpatory statement made by the defendant after an unconstitutional seizure—the precise circumstances of the United States Supreme Court decision in *Brown*, which articulated factors to consider in evaluating attenuation. In *United States v. Ceccolini*, 435 U.S. 268, 277–79 (1978), the Supreme Court emphasized that permanently excluding a defendant’s statements for a constitutional violation raises unique questions in the context of applying the exclusionary rule.

Two Minnesota case exceptions are *Knapp v. Comm’r of Pub. Safety*, 610 N.W.2d 625 (Minn. 2000), and *State v. Leonard*, 943 N.W.2d 149. In *Leonard*, we concluded the attenuation exception did not apply because the evidence at issue derived from the “logical results—not interruptions—of the illegal search” and police found the evidence “soon after conducting the illegal ... search.” 943 N.W.2d at 162. We did not consider the purpose and flagrancy of the police misconduct nor whether the evidence would have been found anyway. *See id.* at 161–63 & 162 n.19. In *Knapp*, we concluded that a second stop of an impaired driver need not be excluded following an unconstitutional initial stop because the police had another valid basis for the second stop (the driver had been ordered not to drive after the initial stop), and so evidence of the driver’s impairment would have been discovered anyway. 610 N.W.2d at 629. *Knapp* turned significantly on the conclusion that the evidence would inevitably have been discovered. *Id.*

The attenuation limitation on the exclusionary rule operates as a policy in a way analogous to proximate cause limitations in tort law. As Justice Kagan aptly put it in her dissent in *Utah v. Strieff*,

[t]he notion of such a disrupting event comes from the tort law doctrine of proximate causation. *See Bridge v. Phoenix Bond & Indemnity Co.*, 553 U.S. 639, 658–59 (2008) ... (explaining that a party cannot “establish [] proximate cause” when “an intervening cause break[s] the chain of causation between” the act and the injury); Kerr, *Good Faith, New Law, and the Scope of the Exclusionary Rule*, 99 Geo. L.J. 1077, 1099 (2011) (Fourth Amendment attenuation analysis “looks to whether the constitutional violation was the proximate cause of the discovery of the evidence”). And as in the tort context, a circumstance counts as intervening only when it is unforeseeable—not when it can be seen coming from miles away. W. Keeton, D. Dobbs, B. Keeton, & D. Owen, *Prosser and Keeton on Law of Torts* 312 (5th ed. 1984). For rather than breaking the causal chain, predictable effects (e.g., X leads naturally to Y leads naturally to Z) are its very links.

579 U.S. 232, 257–58 (Kagan, J., dissenting) (second and third alterations in original).

Wong Sun v. United States presents a concrete case study for the difference between the predictable effects of a constitutional violation and unforeseeable intervening circumstances. 371 U.S. at 471. In *Wong Sun*, the United States Supreme Court first considered the admissibility of an inculpatory statement a defendant made to police in the course of an unconstitutional arrest and incriminating evidence later found based on information provided in that statement. *Id.* at 484–87, 487–88. The Court held that the inculpatory statement must be suppressed. *Id.* at 486–87. In doing so, the Court rejected the argument that the statement was admissible as “an intervening independent act of a free will” because such a determination would take “insufficient account of the circumstances” that called into question the statement’s voluntariness. *Id.* at 486. The Court also held that the incriminating evidence the statement described must be

suppressed because it was “clear that the [evidence was] come at by the exploitation of” the primary illegality of the unconstitutional arrest—the statement made during the arrest was the sole reason officers found the incriminating evidence. *Id.* at 488 (internal quotation marks omitted).

The *Wong Sun* Court then considered a different incriminating statement made by a different defendant. That defendant was also illegally arrested, at a different time, for the same crime. *Id.* at 491. He was released on his own recognizance without making any incriminating statements. *Id.* Several days later, he returned voluntarily to the police station to make an incriminating statement. *Id.* The Court held that the intervening time and voluntary act of returning to the police station sufficiently interrupted or disrupted the causal connection between the illegal arrest and the statement. *Id.* Because the “means” of obtaining the incriminating statement was the defendant’s voluntary act of returning to the police station and making a statement—*not* the pressure of the original unconstitutional arrest and detention—admitting the statement did not signal to police officers that the government will benefit from an illegal seizure or search by admitting evidence despite the illegality of the seizure or search. Under this *Wong Sun* holding, police officers know that if a defendant makes an incriminating statement during an unconstitutional arrest or initial detention the statement will be suppressed. *Id.* at 488 (differentiating between evidence that comes by means of illegality and evidence that comes “by means sufficiently distinguishable” from any illegality).

I take a moment to address a few more general points about the attenuation limitation on the exclusionary rule. In *Brown v. Illinois*, the United States Supreme Court

identified three non-exclusive considerations courts apply in assessing whether the evidence to be suppressed came by means distinguishable enough from an illegal seizure or search to sufficiently interrupt or disrupt the causal connection between the two. 422 U.S. at 603–04 (identifying as considerations the purpose and flagrancy of official misconduct, the temporal proximity between the illegal conduct and evidence to be suppressed, and whether intervening circumstances were present). We adopted these three considerations and have incorporated them into what are known as our *Warndahl* factors for evaluating attenuation. *State v. Warndahl*, 436 N.W.2d 770, 776 (Minn. 1989) (identifying several non-exclusive factors a court may weigh in assessing whether the attenuation limitation applies: the purpose and flagrancy of police misconduct, intervening circumstances, whether law enforcement could have obtained the evidence without the illegal conduct, and the temporal proximity between the illegal conduct and evidence to be suppressed).⁴

⁴ We adopted the Supreme Court’s *Brown* factors in *State v. Weekes*, 250 N.W.2d 590, 595 (Minn. 1977). In *State v. Sickels*, 275 N.W.2d 809, 814 (Minn. 1979), we added a fourth factor: “whether it is likely that the evidence would have been obtained in the absence of the illegality.” Our decision in *Warndahl* repeated the four factors for our attenuation test, so the four considerations are now known as the *Warndahl* factors. 436 N.W.2d at 776. The added factor sounds very much like what is now a separately justified exception to the exclusionary rule—the inevitable discovery exception—and it is unclear what it independently adds in the context of the attenuation limitation. Conflating the two independent exceptions with distinct justifications probably adds confusion to our analysis. Notably, however, we decided *Sickels* five years before the United States Supreme Court first recognized the independent inevitable discovery exception in *Nix v. Williams*, 467 U.S. 431 (1984). To avoid conceptual conflation and confusion among the different exceptions to the exclusionary rule—each of which has a distinct rationale—in an appropriate case where the parties raise the issue, we should remove the “obtained in the absence of illegality” factor from our analysis of the attenuation exception.

Two of these factors—the existence of an intervening circumstance and temporal proximity—directly bear on attenuation for obvious reasons. The third factor—“the purpose and flagrancy of the official misconduct”—bears discussion. As initially formulated in *Brown*, the purpose and flagrancy analysis points in a single direction: evidence obtained under conditions where intervening circumstances exist should still be excluded if police conduct purposefully and flagrantly violates the constitution. *See* 422 U.S. at 603–04, 604 n.9 (citing *United States v. Edmons*, 432 F.2d 577, 585 (2d Cir. 1970)). And that makes sense. One of the exclusionary rule’s primary aims is to deter police from violating citizens’ constitutional rights by excluding evidence obtained through unconstitutional searches. *Malecha*, 3 N.W.3d at 577. The rare cases in which police execute an unconstitutional seizure or search with intent and knowledge that it is unconstitutional create the *clearest* circumstances when excluding evidence is appropriate. But the fact that an officer’s negligence or carelessness results in a constitutional violation should not necessarily mean that evidence obtained as a direct result of and in close temporal proximity to an illegal seizure or search should be admitted. We want to encourage officers to conduct seizures and searches in conformity with the constitution and deter careless, as well as purposeful and flagrant, constitutional violations.⁵

⁵ The United States Supreme Court diverged from this understanding of the “purpose and flagrancy” prong in *Strieff*. 579 U.S. at 241. The Supreme Court asserted that the purpose and flagrancy “factor of the attenuation doctrine reflects th[e] rationale [of deterring police misconduct] by favoring exclusion only when the police misconduct is most in need of deterrence—that is, when it is purposeful or flagrant.” *Id.* (concluding that officer’s constitutional violation was at most negligent). We have not adopted this

B.

The attenuation limitation on the exclusionary rule does not fit well in cases like this, where the evidence to be suppressed is evidence of conduct, like fleeing a police officer, made criminal because it was committed *in direct response to* an unconstitutional seizure or search. This is true for a simple reason: the very nature of the crime is that the suspect is responding to a seizure or search. The causal connection between the seizure and the crime (and evidence of the crime) here is immediate. There is no meaningful argument that the connection between the seizure and the evidence is too attenuated; the seizure directly caused the officer to obtain the evidence, and the evidence would not have existed but for the seizure.⁶

analysis from *Strieff* and we should not do so. *See McDonald-Richards*, 840 N.W.2d at 18–19 (rejecting the argument that events preceding an unconstitutional seizure can cleanse the taint of the seizure). I do not read the court’s opinion to implicitly endorse the *Strieff* analytical approach.

⁶ Contrary to the court’s reading of my dissent, assault on a police officer may not always be a direct response to an unconstitutional seizure or search and, in such cases, the attenuation doctrine may apply. In an early case, *State v. Bale*, 267 N.W.2d 730 (Minn. 1978), we addressed a unique situation in which Bale was allegedly illegally seized at a local bar for a misdemeanor traffic offense. *Id.* at 732. Because Bale had his dog with him, the officer conducting the seizure agreed to return with Bale to Bale’s home to allow him to drop off the dog before heading to the police station. *Id.* at 731. The officer followed Bale into the house, where Bale took time to rummage through his desk. *Id.* He located a gun and then pointed it at the officer. *Id.* After a scuffle, the officer wrested the gun from Bale and arrested him for assault. *Id.* This assault did not arise immediately in response to the arrest on the misdemeanor; the new offense occurred in a different location after the passage of time and with evidence (on a scanty record) that Bale made a considered decision to search for the gun. *See id.* at 733.

Moreover (as discussed more fully in the body of this dissent), in *City of St. Louis Park v. Berg*, 433 N.W.2d at 90, we adopted a different test from the attenuation limitation for determining whether the exclusionary rule applies to cases where a defendant is seeking to exclude evidence of conduct made criminal because it was

Consequently, in cases where the evidence in question is evidence of conduct made criminal because the defendant undertook the conduct in direct response to an unconstitutional seizure or search, we have analyzed the suppression question differently. *See Berg*, 433 N.W.2d at 89–90 (concluding that evidence of suspect’s resistance to an illegal arrest should not be suppressed unless the unconstitutional seizure was designed to provoke the suspect into committing a new crime of resisting arrest); *cf. State v. Combs*, 398 N.W.2d 563, 565 n.2 (Minn. 1987) (stating in dicta that the court of appeals “correctly concluded that even if the stop was invalid, defendants still were not entitled to have the assault and related charges dismissed”). The *rationale* for the rule that conduct a defendant undertook in direct response to an unconstitutional search is broadly similar to the justification for all exceptions to the exclusionary rule (i.e., we do not want to send a signal to police officers that they will benefit from an unconstitutional seizure or search by admitting evidence despite the illegality of the seizure or search), but the *problem* we are trying to solve is different from the concern underlying the attenuation exception—making sure the connection between a constitutional violation and the discovery of the evidence does not stretch beyond sensible limitations.

committed in direct response to an unconstitutional seizure or search. As part of that analysis, we observed that the critical fact in *Bale* and similar cases was *not* the break in causation between the misdemeanor arrest and later assault at the house. *Id.* Instead, the question in such cases is whether the officer’s act of illegal arrest provoked the suspect into committing the new crime. *Id.* We expressly adopted Professor LaFave’s approach to such cases, discussed later in this dissent, stating that “the real basis for not extending the exclusionary rule in situations of this kind is not a ‘causation’ rationale,” nor is it “a question of whether the defendant’s resistance and the police officers’ unlawful conduct are inextricably interwoven....” *Id.*

In cases where the evidence to be suppressed is conduct made criminal because the defendant undertook the conduct in direct response to an unconstitutional seizure or search, our analysis serves two policy goals. First, we want to discourage law enforcement officers from using illegal seizures or searches to provoke individuals into committing crimes. In many ways, this parallels the reasons we exclude evidence in cases where police conduct is a purposeful and flagrant violation of the Constitution even if intervening circumstances interrupt the causal connection between a seizure or search and obtaining the evidence. *Supra* at D-9–10. Second, we have long expressed a strong preference for determining a seizure or search’s constitutionality in a courtroom rather than on a city sidewalk or by the side of the road. *State v. Hoagland*, 270 N.W.2d 778, 780 (Minn. 1978). This preference rests on several considerations, including the legal fact that a defendant does not have a common-law right to resist an unlawful arrest in Minnesota, *id.*, *State v. Wick*, 331 N.W.2d 769, 771 (Minn. 1983), and our concern that authorizing resistance to arrest may lead to violence against police officers. *Berg*, 433 N.W.2d at 90–91; *State v. Kittleson*, 305 N.W.2d 787, 789 (Minn. 1981) (holding that the exclusionary rule does not require suppressing evidence of an assault on a police officer in response to an unconstitutional search or seizure and citing cases expressing concern about the risks of violence associated with assaultive behavior).

Notwithstanding these concerns, however, in *City of St. Louis Park v. Berg* we made clear that the policy consideration underlying the exclusionary rule (disincentivizing certain police behavior) may prohibit admitting evidence of criminal conduct collected in response to an unconstitutional seizure or search if the seizure or

search was conducted in a manner designed to provoke precisely that response.

433 N.W.2d at 90. The State agrees with this reading of *Berg*.

Indeed, these concerns may have a different valence in the context of fleeing a police officer in violation of section 609.487, the crime at issue. First, while violence is inherent in assaultive conduct, the concern diminishes in flight-from-an-officer cases that do not involve assaultive conduct.⁷ We also have not decided whether fleeing a police officer in violation of section 609.487 falls within the common-law rule that there is no right to resist an unlawful seizure or search. *See State v. Hardy*, 577 N.W.2d 212 (Minn. 1998) (requiring suppression of evidence obtained after law enforcement unconstitutionally demanded a suspect open his mouth, the suspect ran in response, and officers used physical force to subdue the suspect, causing the suspect to expel the evidence from his mouth). The common-law rule may not apply in light of statutory language in section 609.487 which requires the State to prove that (1) the defendant “refuse[d] to stop the vehicle ... with intent to attempt to elude a peace officer following a signal given by any peace officer to the driver of a motor vehicle,” (2) *the officer was acting in the lawful discharge of an official duty*, and (3) the defendant knew or should have known the officer was in fact a law enforcement officer. Minn. Stat. § 609.487,

⁷ Indeed, our past cases suggest, without much detail, that protecting police officers from violent responses may be an independent policy reason for exercising our prudential power to preclude applying the exclusionary rule in cases involving assault on a police officer. *Berg*, 433 N.W.2d at 90; *Kittleson*, 305 N.W.2d at 789. In other words, we already may have, and perhaps should overtly, adopt a separate exception to the exclusionary rule in cases involving assaults on police officers, subject to our existing precedent that a defendant has a right to resist an officer in order to defend himself or another against unjustified bodily attack. *Wick*, 331 N.W.2d at 771.

subds. 1, 3. We have never decided whether an officer conducting an unconstitutional seizure or search is acting in the lawful discharge of his duty. *See State v. Kutchara*, 350 N.W.2d 924, 927 (Minn. 1984) (suggesting that an officer who engaged in an unjustified physical attack on a suspect may not be “acting in the lawful discharge of an official duty”); *State v. Stimpson*, No. A12-0626, 2013 WL 1187963, at *4 (Minn. App. Mar. 25, 2013) (considering whether an officer was acting in the lawful discharge of an official duty when conducting an illegal search and concluding that the search was legal).

Engel sought to introduce evidence that the stop conducted against him was unlawful to refute the “acting in the lawful discharge of an official duty” element of the crime. The district court refused to allow such evidence or argument on the grounds that the court had decided the stop was constitutional at a pretrial suppression hearing and the question was not before the jury. Of course, the district court’s reason for excluding the evidence is no longer valid based on the court of appeals’ decision—unappealed to us—that the stop violated Engel’s constitutional rights. *State v. Engel*, 18 N.W.3d 540, 549–50 (Minn. App. 2025). But because Engel did not raise any of these arguments before us, it is best to leave them for a future case.

In past cases, we have spoken only in generalities about this framework. In *Berg*, for instance, our focus was on the particular officers’ subjective motivations to engage in the conduct we found unconstitutional. 433 N.W.2d at 90 (noting that officers’ illegal arrest of defendant was for a probation violation rather than to secure additional information, in a case in which no one suggested officers invaded defendant’s house in order to deliberately provoke him into resisting arrest). We do not, however, typically

consider law enforcement officers' subjective motivations in the search and seizure context. *See, e.g., Douglas*, 29 N.W.3d at 200 (holding that the good-faith exception to the exclusionary rule applies “only when law enforcement acts in *objectively reasonable* reliance on subsequently reversed binding appellate precedent which articulates a rule that specifically authorized the officer's conduct under the circumstances addressed in the precedential case and the rule has not been unsettled by subsequent decisions” (emphasis added)); *State v. Britton*, 604 N.W.2d 84, 88 (Minn. 2000) (stating that “[o]ur task is not to decide whether [a] particular officer's suspicion was genuine[;] ... rather, we examine whether the suspicion was objectively reasonable” based on the facts available to the officer and any rational inferences the officer may have derived from those facts (emphasis omitted)). And while an officer's subjective motivations remain a consideration in objectively assessing whether the officer's search or seizure would provoke a suspect into conduct made criminal because the suspect acted in direct response to an unconstitutional seizure or search, the test cannot be limited to the subjective.

Focusing on an individual officer's subjective motivations for engaging in a search or seizure in a particular case does not address the structural concerns underlying the exclusionary rule. Again, our focus in setting the contours of the exclusionary rule is on the signal that a decision to suppress (or not suppress) evidence obtained under certain circumstances sends to officers in future cases. That is the meaning of deterrence. Limiting ourselves to attempting to peer inside a particular officer's mind to see if that officer had a subjectively bad motive does not achieve that purpose.

Rather, the question before us should be whether a reasonable person, looking at all the facts, would conclude that the officer’s unconstitutional conduct would have provoked a suspect to commit a crime in response to the seizure or search.⁸ Professor LaFave, in his well-respected treatise, has identified a standard to answer to that question: Is the conduct of the suspect in response to the particular unconstitutional search and seizure “common and predictable?” 6 Wayne R. LaFave, *Search and Seizure: A Treatise on the Fourth Amendment*, § 11.4(j) at 500 (6th ed. 2020); *see also State v. Balduc*, 514 N.W.2d 607, 611 (Minn. App. 1994) (stating that “an attempt to dispose of

⁸ Justice Kagan outlines this mechanism well in a slightly different context in her dissent in *Strieff*. In *Strieff*, an officer unconstitutionally detained a person, discovered his name, and ran a check for outstanding warrants. 579 U.S. at 235. The officer found an active warrant and arrested the person. Justice Kagan concluded that the warrant’s existence did not remove the taint of the unconstitutional seizure. *Id.* at 259 (Kagan, J., dissenting). She explained that any other conclusion “creates unfortunate incentives for the police—indeed, practically invites them to do what [the officer] did here.” *Id.* Justice Kagan elaborated:

Consider an officer who, like [the officer in the case], wishes to stop someone for investigative reasons, but does not have what a court would view as reasonable suspicion. If the officer believes that any evidence he discovers will be inadmissible, he is likely to think the unlawful stop not worth making—precisely the deterrence the exclusionary rule is meant to achieve. But when he is told [that some evidence will not be excluded if the person he stops is the subject of an outstanding warrant]? Now the officer knows that the stop may well yield admissible evidence: So long as the target is one of the many millions of people in this country with an outstanding arrest warrant, anything the officer finds in a search is fair game for use in a criminal prosecution. The officer’s incentive to violate the Constitution thus increases: From here on, he sees potential advantage in stopping individuals without reasonable suspicion—exactly the temptation the exclusionary rule is supposed to remove.

Id. at 259–60 (Kagan, J., dissenting).

incriminating evidence ... is a predictable and common response to an illegal search” and so must be excluded as fruit of the poisonous tree); *State v. Blevins*, 10 N.W.3d 29, 40 (Minn. 2024) (Thissen, J., dissenting) (observing that our decisions should not “fl[y] in the face of human nature”). If a suspect’s conduct in response to the specific circumstances of an unconstitutional search and seizure is predictable and unsurprising—if it is foreseeable—then excluding evidence resulting from that conduct serves an important deterrent purpose. It sends a signal to law enforcement officers that they will not benefit from unconstitutional seizures or searches by being allowed to admit evidence those unconstitutional seizures or searches create.

Further, in this context, where we are concerned with evidence of conduct made criminal precisely because the conduct occurred in direct response to an unconstitutional seizure or search, the question of whether a suspect’s conduct was a common, predictable, unsurprising, and foreseeable response necessarily requires considering the perspective of a reasonable suspect in the circumstances, including fears about the reason that suspect is being seized or searched.

The rationale for this rule overlaps, to some extent, with the elements of the crime of fleeing a law enforcement officer under section 609.487. For instance, under the statute, the State must prove that a fleeing person acted with “intent to attempt to elude” the law enforcement officer. Minn. Stat. § 609.487, subd. 1. Accordingly, a suspect may argue to a jury (as Engel did in this case) that they were not intending to elude an officer, but merely to find a different place to stop. That fact, however, does not undermine the need for the exclusionary rule where a seizure or search is unconstitutional. First, a

seizure or search for which no objectively reasonable and articulable suspicion exists may be more likely to provoke a response like flight. Second, the risk of choosing to flee rests with the suspect. If the seizure or search is constitutional, then the exclusionary rule offers no relief. If it is unconstitutional, then the exclusionary rule applies unless the flight is not a common, predictable, unsurprising, foreseeable response. But above all, I return to a primary purpose of the exclusionary rule: to deter unconstitutional searches and seizures. If an officer is allowed to execute an unconstitutional search or seizure knowing that the State will still be able to admit and rely on evidence gained from that illegal conduct—evidence of a new crime a suspect commits in direct response to the seizure or search—then this will undermine the goal of discouraging unconstitutional searches and seizures.

* * *

Because neither the district court nor the court of appeals assessed whether Engel's conduct in refusing to immediately stop in response to an officer activating emergency lights under the circumstances was a common, predictable, unsurprising, foreseeable reaction, I would remand the case to the district court to make that determination.